

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MARC KING	§	PLAINTIFF
	§	
v.	§	Civil No. 1:07CV1183-HSO-JMR
	§	
FIVE STAR ASSOCIATES, ET AL.	§	DEFENDANTS

**ORDER AND REASONS GRANTING PLAINTIFF’S MOTION TO AMEND
AND/OR CORRECT COMPLAINT, AND AMENDED MOTION TO AMEND
COMPLAINT, GRANTING DEFENDANTS’ MOTION FOR LEAVE
TO FILE AN AMENDED ANSWER, AFFIRMATIVE DEFENSES
AND COUNTER CLAIM, AND DENYING DEFENDANTS’ MOTION TO
DISMISS FRAUD, FRAUDULENT CONVEYANCE, PRELIMINARY
INJUNCTION AND RECEIVERSHIP CLAIMS WITHOUT PREJUDICE**

BEFORE THE COURT are various Motions of the parties including: 1) Plaintiff’s Motion to Amend and/or Correct Complaint [79-1]; 2) Defendants’ Motion for leave to file an Amended Answer, Affirmative Defenses and Counterclaim [82-1]; 3) Plaintiff’s Amended Motion to Amend and/or Correct Complaint [83-1]; and 4) Defendants’ Motion to Dismiss Plaintiff’s fraud, fraudulent conveyance, preliminary injunction, and receivership claims pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6) [80-1].

On October 4, 2007, Plaintiff filed a Complaint in the Harrison County Circuit Court, First Judicial District, asserting fraud-based claims and seeking damages, specific performance, a preliminary injunction and other equitable relief. The allegations of Plaintiff’s Complaint surround a contract for his employment by Five Star Associates, Inc., Five Star Resorts, LLC, Diversified Funding, Inc., James Eby and Kelly Eby [collectively “Defendants”] that was executed in October 2004.

Defendants timely filed a Notice of Removal in this Court on November 6, 2007. [1-1] A hearing on Defendants' Motion for Preliminary Injunction was held on April 23, 2008, and an Order was entered denying said Motion on August 7, 2008 [66-1].

On October 16, 2008, Plaintiff filed a Motion to Amend and/or Correct Complaint [79-1]. Defendants filed the instant Motion to Dismiss on October 17, 2008 [80-1] and, on the same day, filed a Motion for leave to file an Amended Answer, Affirmative Defenses and Counterclaim [82-1]. In addition, on October 17, 2008, Plaintiff filed an Amended Motion to Amend and/or Correct Complaint [83-1]. Plaintiff filed a Response to Defendants' Motion to Dismiss on October 27, 2008 [84-1]. No responses or oppositions have been filed with respect to the other pending Motions.

The Court has reviewed the record, pleadings on file, and the relevant legal authorities, and finds that because Plaintiff's Motion to Amend Complaint was timely filed before the deadline for amendments, it should be granted. In following, Defendants' Motion for Leave to file an Amended Answer, Affirmative Defenses and Counterclaims should likewise be granted. In light of these findings and rulings, Defendants' Motion to Dismiss should be denied at this time without prejudice, as premature.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, for the reasons cited herein, Defendants' Motion to Dismiss Plaintiff's fraud, fraudulent conveyance, preliminary injunction, and receivership claims filed October 17, 2008 [80-1], should be and is hereby **DENIED WITHOUT PREJUDICE**.

IT IS, FURTHER ORDERED AND ADJUDGED that, Plaintiff's Motion to Amend Complaint filed October 16, 2008 [79-1], should be and is hereby **GRANTED**.

IT IS, FURTHER ORDERED AND ADJUDGED that, Defendants' Motion for Leave to file an Amended Answer, Affirmative Defenses and Counterclaim filed October 17, 2008 [82-1], should be and is hereby **GRANTED**.

IT IS, FURTHER ORDERED AND ADJUDGED that, Plaintiff's Amended Motion to Amend Complaint filed October 17, 2008 [83-1], should be and is hereby **GRANTED**.

IT IS, FURTHER ORDERED AND ADJUDGED that, Plaintiff's Rule 72 Appeal and Motion for Review of Magistrate's Order filed on January 12, 2009 [89-1], **SHALL BE HELD IN ABEYANCE**. In light of the Court's rulings and this Order, the parties shall contact Chambers in order to inform what issues remain viable with respect to the Rule 72 Appeal.

SO ORDERED AND ADJUDGED this the 19th day of February, 2009.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE